

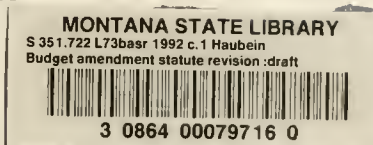
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TERESA OLCOTT COHEA
LEGISLATIVE FISCAL ANALYST

STATE OF MONTANA
Office of the Legislative Fiscal Analyst

STATE CAPITOL
HELENA, MONTANA 59620
406/444-2986



September 11, 1992

PLEASE RETURN

TO: Legislative Finance Committee
FROM: Jim Haubein *Jim Haubein*
SUBJECT: Budget Amendment Statute Revisions - Draft Bill

The BUDGET AMENDMENT PROCESS AND REVIEW report presented to the committee at the June 1992 meeting contained several options for the committee's consideration for statute changes to clarify the use of budget amendments and supplementals when increasing an agency's spending authority. These options are listed below, followed by a summary of the issues raised in the June report.

- 1) Limit the use of the budget amendment process to new sources of revenue received after a legislative session.

While the budget amendment process was designed to provide spending authority for federal and other "new" money received when the legislature was not in session, the number of budget amendments to spend fund balances in state special, proprietary, and current unrestricted accounts is increasing. These budget amendments blur the distinction between supplemental appropriations (which the legislature approves) and budget amendments (which the approving

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authority authorizes). . Further, spending fund balances during the interim reduces the funds available for legislative consideration the next session.

2) Limit the use of the budget amendment and budget amendment bill for the current biennium.

In recent sessions, the budget amendment bill has been used in place of the regular appropriation process to provide spending authority for the next biennium.

3) Delete the evaluation criteria requirement for budget amendments in Section 17-7-403(2), MCA.

The evaluation criteria process required under current law has limited usefulness because: 1) for many budget amendments it is difficult to develop meaningful criteria; 2) reports are received after the funds are spent and there is no follow-up report to the committee; and 3) budget amendments are not included in an agency's base for the next biennium budget.

4) Limit budget amendments to one purpose.

Agencies are submitting budget amendment requests for multiple purposes in a single amendment, increasing the difficulty of determining whether the amendment in its entirety complies with statutory criteria.

5) Define procedures for reviewing receipt of private funds and establishing spending authority for them similar to House Bill 45, the committee bill introduced in the last session.

The current process for receiving and reviewing private funds donated to state agencies does not comply with a series of court cases and legal opinions.

6) Define the purpose and use of the supplemental as it pertains to non-general funds and to increasing interim authority from state special revenue, proprietary, and current unrestricted funds.

Currently there are inconsistencies in the use of the budget amendment and the supplemental to increase an agency's spending authority.

After reviewing the report, the committee recommended that staff from the Office of the Legislative Fiscal Analyst (LFA) and Office of Budget and Program Planning (OBPP) work together and have a draft committee bill prepared for the next committee meeting.

LFA staff have met with OBPP staff and discussed each of the options. With the exception of a difference regarding option 1, staff from the two offices agreed to the changes proposed in the attached draft bill. The draft bill is primarily a draft of House Bill 45, the Legislative Finance Committee bill presented to the 1991 legislature to address legal concerns regarding the legislature's appropriation authority over private funds received by state agencies. The bill has been amended to incorporate other changes suggested in the report.

A discussion of each option follows:

Option 1 - Limit the use of the budget amendment process to new sources of revenue received after a legislative session.

This change is reflected on pages 8 and 9 of the bill in Section 3 in the amended language in Section 17-7-402(1)(a). OBPP staff were concerned about state match monies required for federal grants and felt that the language in subparagraph (a) would not allow budget amending matching state funds.

LFA staff agreed with this concern and added an amendment to the bill on page 10 in Section 17-7-702(6) which exempts matching state funds from the requirement of "new sources of revenue".

In addition to the exemption for match monies the amended language also allows for an increase in a grant which has been appropriated as stated in subparagraph (a), "additional grant revenue or a new source of revenue". This will allow an agency to receive spending authority for additional grant monies received from a source appropriated by the legislature or approved by a previous budget amendment.

OBPP staff were also concerned that the language in subparagraph (1)(a) prohibits budget amendment of additional proprietary funds generated by increased program activity. OBPP argues that: 1) appropriations for proprietary fund operations are based on previous years experience and may not be sufficient to cover operations in the current biennium; and 2) proprietary fund operations provide services to other agencies. If a state agency needs additional services, the proprietary fund budget amendment allows the program to meet the agency's need. In both situations, it is OBPP's position that the budget amendment is the most appropriate method to increase the proprietary fund appropriation.

However, under current law the supplemental appropriation process is available if program activities and costs exceed the appropriated level. The legislature, rather than the approving authority, determines whether replacement of the transferred authority and expansion of the program in the second year of the biennium is appropriate.

Option 2 - Limit the use of the budget amendment and budget amendment bill for the current biennium.

The amendment to the bill for this option (page 10, Section 17-7-402(5)) reflects a compromise between the two offices. The amendment prohibits an appropriation in the budget amendment bill from going beyond the first year of the next biennium. This will allow for continuation of any federal grants that may have a grant period extending beyond the current biennium and/or to continue any grants which for any reasons were not completed in the current biennium.

Option 3 - Delete the evaluation criteria requirement for budget amendments in Section 17-7-403(2), MCA.

On page 11, Section 17-7-403(2), this language has been deleted. Both offices were in agreement with this amendment.

Option 4 - Limit budget amendments to one purpose.

Staff discussed this option and decided not to include an amendment in the bill. According to the legal staff in the Legislative Council, under the current law the committee can take exception to all or any portion of a budget amendment as the statutes are now written. Therefore, no amendment was requested.

Option 5 - Define procedures for reviewing receipt of private funds and establishing spending authority for them similar to House Bill 45, the committee bill introduced in the last session.

The draft bill is primarily a draft of House Bill 45 from the 1991 session which established the review process for the receipt of private funds by a state

agency and amended the budget amendment statutes related to private funds.

This bill:

- 1) establishes criteria for state agencies to follow before they can accept private funds restricted by law, written trust agreement, or contract;
- 2) sets up a process for legislative review of these private funds;
- 3) identifies the private funds as a separate part of the state special revenue fund;
- 4) exempts those private funds from the budget amendment requirement; and
- 5) amends appropriation language pertaining to the funds.

This review process will only be for those private funds which are restricted by law or terms of a written agreement as stated in Section 1 (page 1). This would exempt the small donations received by many state agencies on an on-going basis and should address one of the major concerns which resulted in the tabling of House Bill 45 in the last regular session.

Option 6 - Define the purpose and use of the supplemental as it pertains to non-general funds and to increasing interim authority from state special revenue, proprietary, and current unrestricted funds.

This option will be covered by the amendment for option 1. Since option 1 clarifies the use of the budget amendment for increasing an agency's appropriation, the supplemental appropriation process would be the only other method available to accomplish this purpose.

In addition to the changes above there is a "housekeeping" change recommended by OBPP in Section 4 (page 11) which was not included in the

report to the committee in June. The amendment to Section 17-7-403(c), which addresses the agency's ability to provide additional services, changes the language referring to the agency's personnel and funding and replaces these with the term "appropriations", ensuring the agency's total resources are considered in making this determination, not just their "personnel" and "funding".

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**** Bill No. ***

Introduced By *****

By Request of the Legislative Finance Committee

A Bill for an Act entitled: "An Act generally revising the law concerning budget amendments; establishing criteria for the acceptance and expenditure by state agencies of certain money from private sources; exempting certain funds from the budget amendment process; eliminating the evaluation criteria requirement for budget amendments; amending sections 17-2-102, 17-7-402, 17-7-403, and 17-8-101, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Criteria for acceptance and expenditure of certain nonstate and nonfederal money.** (1) Before an agency may accept or expend money from a nonstate or nonfederal source that would be deposited in the state special revenue fund or in the current restricted subfund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, the approving authority for the agency shall submit to the legislative finance committee a copy of the agreement and a certification containing:

- (a) the specific service that will be provided;
- (b) the proposed duration of the agreement; and

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(c) a statement that the agreement will not result in an ascertainable present or future commitment for general fund support.

(2) The legislative fiscal analyst shall review the agreement and certification to ensure that:

(a) the proposed use of the money has not been specifically disapproved by the legislature;

(b) the terms of the agreement are not contrary to state law; and

(c) the agreement will not result in an ascertainable present or future commitment for general fund support.

(3) The legislative fiscal analyst shall present a written report of each review that is conducted to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the proposed agreement and certification, the legislative fiscal analyst shall submit the committee's written report to the approving authority.

(4) Upon receipt of the legislative finance committee's report, the approving authority may approve or deny the proposed agreement, taking into consideration the legislative finance committee's report.

(5) If an emergency occurs that poses a serious threat to the life, health, or safety of the public or if the legislative fiscal analyst determines that a review is not necessary, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report provided for by this section. Upon receipt of the waiver, the approving authority

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may approve or deny the proposed agreement upon completion of the certification. The waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report. All other requirements and standards remain in effect. After the waiver, the legislative fiscal analyst may complete the written review.

(6) Nothing in this section confers any authority on the legislative finance committee to approve or deny the proposed agreement.

Section 2. Section 17-2-102, MCA, is amended to read:

"17-2-102. Fund structure. (1) There are in the state treasury only the following fund categories and types:

(a) governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type shall be subdivided for operational purposes into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state

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government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation. ~~Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403.~~

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income

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is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system and vocational-technical centers. The financial activities of the current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed

restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system and vocational-technical centers;

(iii) the endowment fund, which accounts for moneys deposited in the state treasury by the Montana university system

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and vocational-technical centers wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for moneys deposited in the state treasury by the Montana university system and vocational-technical centers under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system or vocational-technical center binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system and vocational-technical centers for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for moneys deposited in the state treasury wherein the Montana university system or a vocational-technical center acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

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(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections

(1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section."

{ Internal References to 17-2-102:

5-17-207	13-37-304	15-30-151	*17-2-101
17-2-103 (4)	17-2-104	17-2-105	17-2-106
17-2-107 (7)	17-2-202	17-5-401 (2)	*17-5-416
*17-5-424	*17-5-425	17-5-506	17-5-507
17-5-801 (2)	17-6-201	17-6-203	*17-7-502
20-25-427	20-26-1105	23-7-401	44-13-101
60-3-201	60-11-1107(2)	60-11-1207(2)	75-1-205
75-1-1101	75-2-212	75-5-507	75-6-115
75-10-117 (2)	75-10-447	75-10-621	75-10-622
*75-10-626	75-10-954	75-11-227	75-11-313
76-12-123	76-13-415	76-14-112	77-1-808
80-8-116	80-12-311	80-15-301	82-4-424
82-11-161	85-1-220	85-1-603 (2)	85-1-604
85-1-617	85-1-631	85-2-905 (2)	87-1-258
87-5-121	90-2-102 (2)	90-2-1104	90-3-305 (2)
90-4-215	90-4-612 (2)	90-6-107}	

Section 3. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) ~~No~~ Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment

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to spend ~~funds~~ additional grant revenue or a new source of revenue which ~~were~~ was not available for legislative consideration during the most recent legislative session open to that matter;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies such expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments shall itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is

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restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is subject to the review process provided in [section 1] and is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

{Internal References to 17-7-402: None.}

Section 4. Section 17-7-403, MCA, is amended to read:

"17-7-403. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no

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other reasonable alternative available to provide the additional services. Such certification shall specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing ~~personnel because of the present required workload of existing personnel~~ appropriations or that the agency is unable within its existing ~~funding~~ appropriations to fund all or part of such additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) ~~The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.~~

~~(3)~~ For budget amendments to spend money in the state special revenue fund, except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became

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aware of the emergency."

{Internal References to 17-7-403:
17-2-102x}

Section 5. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of ~~moneys~~ money from ~~the~~ treasury. (1) ~~Moneys~~ Money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), the enterprise fund type, the internal service fund type, and the capital projects fund type, with the exception of refunds authorized in subsection (3), ~~shall~~ must be paid out of the treasury only on appropriation made by law.

(2) ~~Moneys~~ Money deposited in the debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration."

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{Internal References to 17-8-101: None.}

NEW SECTION. Section 6. {standard} Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, and the provisions of Title 17, chapter 7, apply to [section 1].

NEW SECTION. Section 7. {standard} Effective date. [This act] is effective July 1, 1993.

-END-

{ Gregory J. Petesch
Director, Legal Division
Montana Legislative Council
(406) 444-3064 }